

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Mary Henry and Andrew O'Connor
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 21, 2017
SUBJECT: Proposed initiative measure #13 concerning State Severance Taxes on Oil and Natural Gas

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. Increase the oil and gas severance tax rate;
2. Eliminate the severance tax credit that is based on property taxes paid;
3. Eliminate the stripper well exemption; and

4. Require some portion of the severance tax revenues to be used for specified purposes.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. The text of the proposed initiative appears to be a ballot title, rather than actual language that would be included in the Colorado constitution or the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.
2. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
3. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
4. Under section 39-29-105 (1)(b), C.R.S., the sales tax rate for oil and gas for gross income of \$100,000 and under \$300,000 is 4% and for \$300,000 or more is 5%. Is it your intent to amend these rates by requiring gross income of \$200,000 or more to be taxed at 10%?
5. Under section 39-29-105 (2)(b), C.R.S., a taxpayer may claim a credit against severance taxes that is equal to 87.5% of the ad valorem taxes assessed or paid during a taxable year. Is this the credit that you intend to eliminate?
6. Under section 39-29-105 (1)(b), C.R.S., oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax is exempt from the severance tax. Is this the stripper well exemption that you intend to exempt?

7. The following questions relate to the clause “exempting revenues from the tax and related investment income from state and local government spending limits”:
 - a. Are the “revenues from the tax” those that the state receives as a result of all of these changes?
 - b. Will the state be able to calculate how much new revenue is to eliminating the tax credit or stripper well exemption?
 - c. What are the state and local spending limits from which the revenue will be exempt?
 - d. Can statewide voters exempt revenue from a local district spending limit?
8. The following questions relate to the new allocation:
 - a. Oil and gas revenue is currently allocated under section 39-28-110, C.R.S. Is it your intention to amend this allocation?
 - b. What revenue will be distributed under the new allocation?
 - c. If only the additional revenue is to be allocated, will the state be able to calculate how much new revenue is attributable to eliminating the tax credit or stripper well exemption?
9. Is there an existing scholarship program that the designated severance tax revenue will fund? If not, is it your intent that the General Assembly should create a new scholarship program?
10. Do “state colleges and universities” include both public and private schools?
11. Is it your intent that the revenue designated for funding “kindergarten and elementary school education” be distributed through the state’s existing method for funding public schools? If so, was your exclusion of public high schools intentional?
12. Is there currently an air monitoring program that you intend the designated severance tax revenue to be used for? If not, is it your intent that the General Assembly should create such a program?
13. The following questions relate to fracking-related pollution:
 - a. There is no current definition of fracking in statute. What do the proponents consider “fracking-related pollution”? Air pollution? Water

pollution? Is it limited to pollution from extracting oil and gas or does it also include collecting and gathering equipment?

- b. What is meant by the phrase “bearing the brunt” of fracking-related pollution? Does this refer to any county or municipality that has some amount of fracking-related pollution? Is it intended to limit monitoring of air pollution to counties and municipalities that have some objectively larger proportion of fracking-related pollution?
- c. Who determines which counties and municipalities bear the brunt of fracking-related pollution?

14. How will the state fund renewable energy?

15. Is there an existing program to provide medical treatment for residents suffering from the negative impacts of oil and gas operations? If not, is it your intent that the general assembly should create such a program?

16. What is a “negative health impact”?

17. Who will determine whether a particular medical condition is from an oil and gas operation?

18. Are “residents”, residents of the state or counties and municipalities bearing the brunt of fracking-related pollution?

19. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **add** section ___ to article X as follows:" or, for example, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article ___ to title 39 as follows:".
3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to each of the proposed initiative and be in bold-face type.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
6. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.